

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
ST. FRANCIS HOSPITAL :
and : Case 11
ST. FRANCIS FEDERATION OF NURSES AND : No. 41536
HEALTH PROFESSIONALS, LOCAL 5001, : A-4394
AFT, AFL-CIO :
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Appearances:

Bob Russell, Field Representative, Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO, for the Union.
Quarles and Brady, Attorneys at Law, by David B. Kern, for the Hospital.

ARBITRATION AWARD

St. Francis Hospital, herein the Hospital, and St. Francis Federation of Nurses and Health Professionals, Local 5001, AFT, AFL-CIO, herein the Union, pursuant to the terms of their collective bargaining agreement, requested the Wisconsin Employment Relations Commission to designate Douglas V. Knudson, a member of the Commission's staff, as an arbitrator to hear and resolve a grievance. The undersigned was so designated. Hearing was held at St. Francis Hospital in Milwaukee, Wisconsin on March 2, 1989. A stenographic transcript of the hearing was received on March 20, 1989. The parties completed filing post-hearing briefs on May 12, 1989.

ISSUE

The parties stipulated to the following statement of the issue:

Did the Hospital violate the collective bargaining agreement when it hired Diane Rogahn and rejected Carrol Glodowski for the position of endoscopy nurse in the Outpatient Department in September, 1988? If so, what should be the remedy?

BACKGROUND

On August 29, 1988 1/ the Hospital posted a list of numerous vacancies, including an endoscopy nurse position in the Outpatient Department, herein OPD. The posting did not list any specific duties for the endoscopy position. Those duties were explained by Mary Rios, the Manager of the OPD, during her interviews with the applicants.

The endoscopy nurse position involves numerous duties associated with endoscopic procedures and care which are performed at the Hospital on an outpatient basis. The OPD Skills List for Endoscopy enumerates nineteen specific skills which nurses in the position need to perform. Those skills include various endoscopic procedures, plus a listing of the different methods, equipment and skills associated with the procedures. Also listed are such duties as teaching patients what will occur before and after the procedures are performed, administering various medications, monitoring and assessing of patients during the procedures, assisting in the taking of biopsies and specimens, and starting intravenous solutions. Registered Nurses, herein RNs, can take specialized training to become certified in gastroenteroscopy.

The Hospital also employs trained endoscopy technicians, who are not RNs, to assist the physician during the procedures by taking care of the specialized endoscopic instruments and by helping to collect specimens. During

1/ Unless otherwise specified, all other dates herein refer to 1988.

approximately 35-40% of the time, two endoscopic procedures are being performed at the same time, so the RN and the Technician are in separate rooms assisting different physicians.

Three individuals applied for the position of endoscopy nurse. One applicant, who did not work at the Hospital, had ambulatory care and chemotherapy experience, but no endoscopy experience. She was not hired.

Another applicant was Carrol Glodowski who began working for the Hospital on February 4, 1980 as a Licensed Practical Nurse (LPN) in the Intensive Care/Coronary Care Units (ICU/CCU). In 1985 Glodowski became a Registered Nurse and worked in the Hospital's medical/surgical unit. Currently Glodowski is working in the Hospital's chemotherapy unit where she administers chemotherapy to inpatient oncology patients. Glodowski does not have any hands-on experience with endoscopy procedures, but has observed two endoscopy procedures during the time she has been an RN at the Hospital. Prior to beginning her employment with the Hospital in 1980, Glodowski had worked at another hospital as an LPN for nine years in Obstetrics, Pediatrics and the Medical/Surgical units and had been trained in Telemetry and Coronary Care. Currently Glodowski is pursuing a bachelor's degree in nursing. Glodowski's annual performance appraisal form dated March 31, 1988, the most recent as of the hearing, shows that on all factors, except for attendance, Glodowski was rated as either meeting or exceeding performance standards. In the attendance area she received a rating of partially meeting performance standards.

The third applicant was Diane Rogahn, who began her employment with the Hospital on May 9, 1988 as an RN. Previously, for approximately five years, Rogahn had worked as an RN at New Berlin Memorial Hospital where her duties included working in the One Day Surgery/Endoscopy Unit.

Rogahn formally began working in the endoscopy nurse position on September 25, although she may have floated in the endoscopy position prior to said date. Mary Garcia, a member of the bargaining unit, had the primary responsibility for training Rogahn. Garcia had worked as the endoscopy nurse for approximately seven and one-half years until she resigned her employment with the Hospital, effective on or about November 4, and was a certified gastroenteroscopy technician. Garcia was on part-time status and worked with Rogahn four hours per day in the mornings, three or four days per week. When Garcia was not working, Lillian Sabatini, who was the designated preceptor during Rogahn's orientation in the endoscopy position, worked with Rogahn.

RELEVANT CONTRACTUAL PROVISIONS

3.01. The parties recognize the importance of providing the patients with safe and competent care.

. . . .

4.01. The Union recognizes that the Hospital has an obligation of serving the public by providing high quality, efficient and economical care, and in meeting medical emergencies.

. . . .

4.02. Without limiting the generality of the foregoing, the Hospital's management rights include: the right to manage the Hospital and determine the work to be done, the time and manner in which the work will be done, and by whom the work will be done; the right to schedule working hours the right to direct the working forces, including the right to hire, to promote, to transfer, to suspend, to demote, to discipline and to discharge for cause any employee; the right to determine and reasonably redetermine qualifications of

employees and, after consultation with the Union, to make reassignments based on such determinations;. . .

. . .

- 4.04. It is agreed that the listing of management rights as noted above shall not be deemed to exclude other management rights and prerogatives not specifically listed above.
- 4.05. The Hospital's not exercising any function hereby reserved for it or its exercising any function in a particular way shall not be deemed a waiver of its right to exercise such function or preclude the Hospital from exercising the same in some other manner not in conflict with the express provisions of this agreement.
- 4.06. The Hospital shall not exercise its function under this Article to circumvent this Agreement.

. . .

- 15.01. (a) Based on the Hospital's assessments of patient care needs, employees may be transferred or reassigned to work in a different area or unit than that where the employee is presently assigned.

. . .

- 15.04. Filling Vacancies. The Hospital will post notice of all permanent vacancies and new positions on the bulletin board in the main lobby. Notices shall be posted for at least seven consecutive days. Notices shall at least contain the vacancy's classification (full-time, part-time or float pool), unit, department and shift. Whether a vacancy exists is up to the Hospital to determine.
- 15.05. Any employee interested in filling the vacancy shall notify the employer in writing provided that such employee has at least six (6) months of seniority.
- 15.06. Vacancies will be first filled by the most senior qualified applicant in the same job classification in the same unit. If there are no applicants within the unit, then the vacancy will be filled on the basis of:

- Ability (including applicable licensure if required)
- Aptitude
- Documented Attendance
- Documented Attitude
- Seniority

- 15.07. The Hospital will notify applicants of its decision within two (2) weeks after the close of the posting period. The employee will normally assume the position within two weeks of such occurrence. Whenever practicable the Hospital will fill vacancies with current employees.

. . .

- 15.09. If the position is filled by an applicant within the same job classification but from a different unit there will be a trial period of up to three (3) months. During this time,

the Hospital may transfer or return the employee to his/her former job if the Hospital feels that the employee's performance in the new job is unsatisfactory and if the former job is available; the employee may return to his/her former job if the employee is dissatisfied with the new unit and if the former job is available.

. . .

- 15.10. Staffing. The Hospital will determine and attempt to provide adequate numbers of registered nurses and auxiliary nursing personnel on all shifts as necessary, consistent with sound practices, and will fill approved vacancies promptly as needed, in order to provide safe and adequate nursing care and to make maximum utilization of the training and competencies of all nursing personnel.

POSITION OF THE UNION

The Hospital's rejection of Glodowski's transfer request was without factual and contractual basis. The grievance should be sustained.

Section 4.02 of the contract gives the Hospital the general right to transfer employes according to the provisions of the collective bargaining agreement. Specific language governing transfers and assignments is contained in Article 15. That specific language must prevail over the general language of Article 4.

Section 15.06 is a modified seniority clause whereby the senior employe is given preference if the employe has the ability, aptitude, and acceptable attendance and attitude to perform the job. The contract does not define ability except to specify, in Section 15.06, applicable licensure if required. Glodowski is licensed as a Registered Nurse.

Rios conducted an inferior interview with Glodowski by considering only ability, rather than all five factors specified in Section 15.06. Since Rios disregarded the other four factors, her rejection of Glodowski was unreasonable and arbitrary. Also, the Hospital improperly added the additional factor of experience to those specified in Section 15.06. Further, the person conducting the interviews had a very limited background in endoscopy, which would make it difficult to determine if an applicant without specific experience would have the ability to function in the position. The interviewer also failed to establish the scope of Rogahn's experience in endoscopy. When Garcia, the primary training person, assessed Rogahn's level of endoscopy experience, she concluded that Rogahn would have to be trained from the beginning, because Rogahn had worked in endoscopy at the New Berlin Hospital only about once a week and had functioned only as an RN observing the patient without handling the equipment. The testimony of Sabatini, Rogahn's preceptor, confirmed Rogahn's need for extensive training in endoscopy. In fact, nothing was checked off Rogahn's skill list until October 17 with over one-half of the skills remaining to be completed in mid-November.

Glodowski had significant experience and training in Telemetry, ICU and Chemo which skills could be applied to the endoscopy position. The Hospital failed to consider the relevance of those skills.

The Hospital had decided, before the endoscopy position was posted, to transfer Rogahn, so it was made to appear that Glodowski was considered.

The contract provides for a trial period of three months. In light of the months of training Rogahn received, as the more senior employe Glodowski should have been given training during a trial period in the endoscopy position.

POSITION OF THE HOSPITAL

Paragraphs 3.01, 4.01 through 4.05, 15.01(a) and 15.10 of the agreement reserve to the Hospital the right to make those hiring and transfer decisions which most effectively serve the goals of providing the best quality of care in the most efficient and economic way possible. Thus, the weight and relevance of the separate attributes set forth in paragraph 15.06 will necessarily vary depending on the nature of the position in question and the Hospital's assessment of how best to maximize the goals of high quality, efficient and cost effective care.

The Union must show that the Hospital's choice of Rogahn over Glodowski was arbitrary, capricious, unreasonable or discriminatory. In light of the highly specialized job requirements and the background and experience of the candidates, the Hospital's decision comported with its contractual rights.

The endoscopy nurse position is highly specialized, as evidenced by the testimony of Garcia and Glodowski. Although she claimed to have extensive experience in many different areas of patient care, Glodowski admitted that she could perform only three of the 19 skills listed on the Skills List for Endoscopy and those three skills, i.e., charting, assessing and patient teaching, are common to virtually any nursing setting.

Rogahn was chosen because she had three years of experience in endoscopy prior to beginning her employment with the Hospital. She was familiar with many of the skills necessary for the endoscopy position, i.e., pre-operative and post-operative instruction, charting, assessing, administering medications, and upper and lower endoscopies. She also had short-term care and same-day surgical experience at her previous job, which work involved the same types of prompt assessment and pre-admission and post-admission instruction as are required in the outpatient endoscopy setting. Her references from her previous employer were highly favorable. By contrast, during her interview with Rios, Glodowski admitted that she had no experience in endoscopy. The Hospital had a good-faith basis to select Rogahn rather than Glodowski.

Mary Garcia's testimony was biased and unreliable. Sabatini was not a planned witness and her testimony, that Rogahn did have prior endoscopy experience, should be credited.

Paragraph 15.05 does not preclude the Hospital from considering an employe with less than six months seniority. Said language merely means that employes with less than six months seniority have no guaranteed right to bid on a vacancy.

The Hospital selected Rogahn in good faith on the basis of facts available at the time the selection was made. Rogahn's subsequent progress in the position is not relevant. The contract does not require the Hospital to train applicants for a position.

The Hospital believes the grievance should be denied.

DISCUSSION

The Hospital accurately asserts that Section 4.02 of the contract reserves to it the broad rights both to determine "by whom the work will be done" and "to direct the working forces, including the right. . .to transfer. . .any employee." Section 15.01(a) specifies the Hospital's ability to transfer or reassign employes to different areas or units based on patient care needs. However, the contract also details, in Sections 15.04 through 15.10, the process the Hospital has agreed to follow in filling vacancies. When current employes are interested in filling a vacancy in a different unit, the Hospital has agreed to consider the applicants on the basis of the five factors specified in Section 15.06. Thus, the Hospital's broad right to transfer employes to fill vacancies is qualified by the language in Article 15.

The Union asserts that Section 15.06 means the applicant with the greatest seniority who is qualified must be given the job. Such would appear to be an accurate interpretation of the first sentence of Section 15.06. However, said sentence covers only situations when the applicants are in the same job classification and the same unit as is the vacancy. The instant situation is different, since Rogahn and Glodowski were not working in the unit in which the vacant endoscopy position was located. Therefore, the second sentence of Section 15.06 applies to this matter. Accordingly, the Hospital is not required to promote the senior bidder who is qualified. Rather, the Hospital must look to the five factors specified as part of the second sentence in Section 15.06, when filling the vacancy. The language of Section 15.06 does not require that each factor be given the same value as the other factors but rather, is silent with respect to the weight each factor is to be given. It can reasonably be assumed that the importance of a factor will vary from vacancy to vacancy depending on the nature of the vacancy and the applicants for the vacancy.

It is clear that, in the instant matter, Rios screened the applicants on the basis of one factor, i.e., their ability to perform the duties of the endoscopy vacancy, and selected Rogahn because she was the only applicant with endoscopy experience. Rios testified that she was aware Glodowski had far more seniority than Rogahn. Rios also testified that she did not consider Glodowski's attendance, attitude or seniority because Glodowski didn't have the ability to perform the endoscopy duties. Rios did think Glodowski could be trained to perform the endoscopy duties. The fact that Rios relied on only one of the five factors in selecting the successful applicant does not automatically cause her decision to be unreasonable or arbitrary. If none of the applicants had possessed endoscopy experience, then a failure to consider all five factors in reaching a decision would have been difficult to justify.

Arbitrators generally consider the term "ability" to include experience.
2/ Contrary to the Union's argument herein, Rios' consideration of the work

experience of the applicants did not constitute the establishment of a sixth factor. Rather, the work experience of the applicants was a legitimate and relevant consideration in evaluating their ability to perform the endoscopy duties. The first sentence of Section 15.06 recognizes that concept by requiring the senior applicant to be qualified. In situations covered by the first sentence of Section 15.06, seniority becomes relevant only if more than one applicant is qualified for the vacancy. It was not unreasonable or arbitrary for the Hospital to follow a similar approach in the instant case and to consider the other four factors only if more than one applicant was qualified for the endoscopy position. The contract does not contain language restricting the Hospital's ability to determine the qualifications for a position. Therefore, the Hospital had the right to require endoscopy experience as a qualification in this matter. If more than one applicant had possessed endoscopy experience, then the Hospital would have had to consider the other four factors in selecting the successful applicant.

Although Glodowski has demonstrated a strong aptitude for the nursing profession, she lacks any direct endoscopy experience. Thus, she would require considerable training to become qualified in endoscopy, since the testimony of the witnesses was in agreement that endoscopy is a highly skilled and specialized function.

The witnesses did disagree with respect to the scope of Rogahn's experience in endoscopy duties. When Garcia began working with Rogahn, she concluded that Rogahn's experience in endoscopy was very limited, that she had functioned only as a Registered Nurse by observing the patients during the procedures while technicians handled the equipment, and that Rogahn's training "would have to start from the beginning." In contrast, Sabatini testified that Rogahn had some prior endoscopy experience, although she did not know how much, and that Rogahn exhibited familiarity with some of the endoscopy procedures, so that her training did not have to start "from scratch." Sabatini was of the opinion that Rogahn's prior endoscopy experience enabled her to demonstrate competence in the areas listed on the Skills Checklist more quickly than someone with no endoscopy experience could have demonstrated.

The afore-described disagreement over the amount of training required by Rogahn arose after Rogahn was selected for the endoscopy position and after Glodowski filed her grievance, but before Rogahn assumed the endoscopy position on a regular basis. A review of the information available to Rios at the time she selected Rogahn for the endoscopy position shows that Rios believed Rogahn had endoscopy experience which belief was strengthened by the written reference from the Clinical Director at Rogahn's previous employer. Said reference stated Rogahn was "a valuable asset to the One Day Surgery/Endoscopy Unit." During her interview Glodowski told Rios that she had no experience in endoscopy, although she believed certain elements of her nursing experiences in Chemotherapy, ICU and Telemetry would be applicable to the endoscopy duties. Rios concluded that Glodowski's nursing experience did not constitute the level of ability which would meet the requirement of endoscopy experience. The Union disagrees with that conclusion.

Based on the information available to Rios at the time she selected Rogahn for the endoscopy position, said selection was not unreasonable or arbitrary. The Union alleges that Rogahn's need for extensive training in endoscopy proves the Hospital should have chosen the more senior employe, since Glodowski would have been capable of performing the endoscopy duties if she had been given as much training as Rogahn received. The record does not contain any comparative data concerning either the amount of training given to other endoscopy nurses or how soon such nurses completed the endoscopy Skills Checklist. What the record does contain is a difference of opinion by Garcia and Sabatini as to whether Rogahn had any endoscopy experience which reduced the amount of training she needed. There is nothing in the record to show that Garcia ever advised Rios or Sabatini that she believed Rogahn had no experience in endoscopy and had to be trained from the beginning in the endoscopy duties. While Garcia was the most experienced and trained endoscopy nurse at the Hospital, Sabatini was also experienced in endoscopy procedures. The undersigned is not persuaded that the Hospital was unreasonable or arbitrary in selecting Rogahn for the endoscopy position.

The undersigned agrees with the Hospital's interpretation of Section 15.05, that an employe with less than six months of seniority has no guaranteed right to bid on a vacancy, although the Hospital can consider such an employe for a vacancy if it so chooses. As the Hospital points out, the Union's interpretation of Section 15.05 would conflict with the last sentence of Section 15.07. Therefore, the Hospital's interpretation of Section 15.05 is more reasonable.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the Hospital did not violate the collective bargaining agreement when

2/ How Arbitration Works, Elkouri & Elkouri, (4th Ed. BNA, 1985) p. 623

it hired Diane Rogahn and rejected Carrol Glodowski for the position of endoscopy nurse in the Outpatient Department in September, 1988; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 7th day of July, 1989.

By _____
Douglas V. Knudson, Arbitrator